

Interview Summary

Application No.

09/733,392

Applicant(s)

HAASE, RICHARD ALAN

Examiner

Chester T. Barry

Art Unit

1724

All participants (applicant, applicant's representative, PTO personnel):

(1) Chester T. Barry (for the USPTO).(3) Carl Hennagir (protester).(2) David Crichton (for 3rd party requester CIBA).(4) Sue Shaper (for patent owner).(5) RICHARD HAASE (owner)Date of Interview: 5/7/01-5/31/01.Type: a) ☒ Telephonic b) ☐ Video Conferencec) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description:

Claim(s) discussed: NONE.Identification of prior art discussed: NONE.Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) ☒ It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR § 1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case unless both applicant and examiner agree that the examiner will record same. Where the examiner agrees to record the substance of the interview, or when it is adequately recorded on the Form or in an attachment to the Form, the examiner should check the appropriate box at the bottom of the Form which informs the applicant that the submission of a separate record of the substance of the interview as a supplement to the Form is not required.

It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner.
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The purpose of this memo is to clarify for the record the bi-lateral communications between the examiner and each of the four other persons listed above during the period of about 5/7/01-5/31/01. On or about 5/6/01, per the 3/21/01 Decision to Merge, Conclusion, 4. I, the examiner reviewed the merged file to determine if a housekeeping amendment had been filed in the case. Finding none, the examiner telephoned Sue Shaper to determine if any such housekeeping amendment had been timely filed, i.e., by April 21, 2001. She said that a housekeeping amendment had been timely filed. The examiner invited Sue Shaper to file by fax a copy of the housekeeping amendment. On 5/7/01, the fax was received and subsequently entered. Among the papers filed was a revocation of Sue Shaper's power of attorney. The examiner then called Richard Haase, the patent owner, suggesting that he not prosecute the merged reexam / reissue pro se but that he retain patent counsel. Mr. Haase stated his intention to do so. Noting the apparent delay of some 2+ weeks in matching of the as-yet unseen hard copy of the housekeeping amendment, and mindful of the requirement for examination with "special dispatch," the examiner then telephoned David Crichton, stated that the PTO appeared to be experiencing some delays in paper matching, and inquired simply, "Have you filed a protest?" The reply was "no," but that he (David Crichton) was aware of a party who might want to file a protest. Shortly thereafter that day, on or about 5/7/01, Carl Hennagir of Gulf Coast Waste Disposal, telephoned the examiner stating his intention to file a protest, and inquired as to the deadline for filing a protest. The examiner referred Carl Hennagir to MPEP 1900 and 37 CFR 1,291. Reading from the July 1998 version of the MPEP 1900-1, the examiner stated 37 CFR 1.291 says, "A protest . . . will be entered in the application file if . . . the protest is submitted prior to the mailing of a notice of allowance." The examiner stated that a notice of allowance had not been mailed. On or about 5/30/01, the examiner received a voice mail message from Carl Hennagir stating that a protest would be sent "by FedEx" within a half-hour or so of the message. Later that day, the examiner telephoned him back, stating that if he wished, he could fax a copy of the protest to the examiner's fax telephone number 703-872-9077 provided the paper was not longer than 20 pages in length. On 6/1/01, the examiner received an 18 page fax from Carl Hennagir.

As indicated above, the merits were not discussed with any party.

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Merged Reissue Application 09/733,392 (docket 0170SS:45347) and
Reexam Control No. 90/005710

Page 1/1

Applicant / Owner: HAASE
Art Unit: 1724

ADDENDUM

Consideration of 18 page Protest received by the PTO on 5/31/01 from Carl Hennagir via fax.

Issue 1: A "thermophilic digestion system" as recited in the claims is unambiguously one operated according to a "thermophilic digestion process" which, by applicant's own definition at col. 2 line 12, "relies on high operating temperatures [i.e.,] greater than about 55°C. or 131°F" and therefore is limited to one operated at at least about 55°C or 131°F notwithstanding applicant's having referred to "active bacteria" above about 115°F as being "of the thermophilic variety" at least for the reason that the claims recite sludge that has been digested by a "thermophilic digestion process" and not by "active bacteria of a thermophilic variety." The excerpts appearing at indented sections a, b, d, and e at pages 4/18 and 5/18 of the fax were considered and the Haase patent '435 was considered, but the references themselves as one would expect them to appear in Attachment E were not considered for want of Attachment E to be included in the 18 page fax. The citation noted as ref. "c" was not considered because it is not clear that that reference is prior art. It is said to have been published in 1996. The Haase application was filed in Sept. 1996.

Issue 2: To the extent protester is raising the issue of claim scope indefiniteness under 35 USC 112, second paragraph, the examiner responds that the Haase '435 patent is limited to the subject matter set forth in the claims of that patent. Claim 1, for example, is directed to a method for dewatering biological sludge that has been digested by a "thermophilic digestion process." Unambiguously, the claim would not be anticipated by a reference if that reference were directed to treatment of sludges which had not first been digested by a "thermophilic digestion process," such as a sludge which had been digested at temperatures no higher than "about 55°C." The claimed method, of course, is limited also by the recitations appearing in the body of the claim. The Haase '750 patent was not considered at least for the reason that it is not prior art and not filed before the application which issued as the '435 patent.

None of Attachments A, C, D, and F was considered because these documents do not appear to be prior art, nor do they appear to describe prior art. Attachments B, E, and G (and further, if any) were not included in the fax of 5/31/01 and therefore could not be considered by the examiner.

6/1/01


CHESTER T. BARRY
PRIMARY EXAMINER